application. In the present case I am satisfied, however, that it was not open to the prosecution to call evidence to anticipate a supposed defence which was never put up and which was never likely to be put up. When it is remembered that a dishonest intention is an essential element of every crime of this class it will be realised how dangerous it would be to admit evidence of other offences to prove dishonesty where such other evidence had no other connection with the issues before the Court. It would be only a short step to admit evidence tending to show that the accused was a bad character on the specious plea that the prosecution must be allowed to prove that the accused had a dishonest intention when he committed the particular crime with which he was charged.

In the case before me, notwithstanding the learned Magistrate's remarks as quoted above, I think that the evidence of system, which I consider inadmissible, must have influenced the learned Magistrate in recording a conviction. The prosecution evidence apart from the evidence of system was far from strong, and I am certainly not prepared to find that without such evidence there was sufficient evidence to justify the decision. The appeal therefore will be allowed and the convictions quashed and the sentence set aside.

Appeal allowed.

PHILIP HOALIM v. AMALGAMATED THEATRES LIMITED

[O.C.J. (Terrell J.) June 20, 1935]
[Singapore Suit No. 598 of 1934]

Practice — Interrogatories — Answers by secretary of a company — Inconsistency with sworn statement made by anothr officer of the company in a previous case — Striking out — Jurisdiction of Court.

In an action for damages for wrongful arrest and false imprisonment against a company the plaintiff delivered interrogatories the answers to which were made by the secretary of the company. The answers to some of the interrogators were professed to be based on information obtained from another officer of the company who had given evidence in certain proceedings in the Police Court, upon which the present suit was founded. Such answers contradicted the sworn evidence given at the Police Court. In an application to strike out the answers as being a sham and an abuse of the process of the Court,

Held: that the inherent jurisdiction of the Court to order the striking out of answers to interrogatories cannot be invoked in the present case, the inconsistent statements being made by two different members of the company.

Summonses in Chambers adjourned into open Court and heard together.

Walters for the plaintiff (applicant).

Briggs for the defendants (respondents).

The facts and arguments are sufficiently stated in the judgment.

Cur. Adv. Vult.

Terrell J.: By an order dated the 8th February, 1935, the plaintiff was given liberty to deliver certain interrogatories referred to on the summons. The interrogatories were to be answered by the defendants "by their secretary or other proper officer."

The interrogatories were answered by the affidavit of Alfred Weber, the secretary of the defendant company, in an affidavit sworn on the 20th February, 1935.

[12] The relevant interrogatories and answers are as follows:— [12]

Interrogatories.	Answers.
3. Shortly prior to the time when the plaintiff sought admission as aforesaid or at what hour did not the said Walter Dennis Lambert as such manager call two or how many constables from the front of the said theatre or whence into the precincts of the said theatre or whither? State the names and the numbers respectively of the two constables?	3. In answer to the third interrogatory I say that the said Walter Dennis Lambert did not at such time as suggested or at any time on the said day as such manager or otherwise call two or any constables from the front of the theatre into the precincts of the said theatre or anywhere.
4. Were not the constables, police constables 1528 and 379? Were not their respective names Said Shah and Sardar Shah?	4. In answer to the fourth interrogatory, I crave leave to refer to the answer to the third interrogatory.
5. Did not the said Walter Dennis Lambert forthwith or when post the two said constables or whom outside one of the two doors leading into the auditorium on the ground floor of the said theatre from the inner vestibule? If nay, where did he post the said two constables and each of them? If Yea, was not the door at which they were so posted the door on the right hand side of the inner vestibule looking towards the stage of the said theatre? Did he not instruct the two said constables or what constables or constable after so posting them as aforesaid not to allow anyone to get into the said theatre? If nay, what instructions did he give the two said constables or either and which of them?	5. In answer to the fifth interrogatory, I say that the said Walter Dennis Lambert did not forthwith or at any time post the two said constables or either of them outside the said door or anywhere. He did not instruct the two said constables or any constables or constable not to allow any one to get into the said theatre. Nor did he give any instructions to the two said constables or either of them. He did post two of the watchmen employed by the defendant company outside one of the two doors leading into the auditorium on the ground floor of the theatre from the inner vestibule.
	10. The above answers are all made to the best of my information and belief such information being obtained for the most part from the said Walter Dennis Lambert.

The plaintiff being dissatisfied with these answers has applied to the Court by two summonses Nos. 285 and 296 which are complementary to one another.

S/C 285 asks that the said Walter Dennis Lambert answer interrogatories 3, 4 and 5 and S/C. 296 asks that the answers to interrogatories 3, 4 and 5 be struck out and that the defendants by their secretary or other proper officer answer or further answer the interrogatories in question.

The summonses were adjourned into open court and came on for hearing together.

The basis of the plaintiff's objection is that Lambert in the course of evidence given on oath before the Police Court, when the plaintiff was charged with assaulting the two Police constables in question, gave evidence at variance with the answers now given by the secretary and which he professes to give upon information given to him by Lambert himself. In these circumstances the plaintiff submits that the answers are a sham and an abuse of the process of the Court and should be struck out under the Court's inherent jurisdiction. The plaintiff further objected

that the Secretary having presumably knowledge of Lambert's statement in the Police Court proceedings should have preferred Lambert's sworn statement to any subsequent unsworn statement made to the defendants' solicitors and that in any case the secretary should have sworn to his "knowledge, information and belief" whereas he only swore to his information and belief.

As regards the latter point it was admitted that technically the form of the affidavit was incorrect but the defendants by their counsel were quite willing to reswear the affidavit in exactly the same form adding the word "knowledge". For reasons appearing later I do not think it necessary to put the defendants to this expense.

On the second point it is necessary to refer to the relevant orders and rules. Order XXX rule 5 provides that in the case of a corporation the opposite party may apply for an order allowing him to deliver interrogatories to "any member or officer" of such corporation. In the present case the original order was in the usual form and generally speaking the secretary is the proper person to make the answer. The plaintiff could of course have applied that some other officer of the company be interrogated, and 'the Court undoubtedly has jurisdiction to direct the information to be given by such persons as can best give it." (See *Attorney-General* v. *North Metropolitan Tramways Co.* [1892] 3 Ch. p. 70 at p. 74). The plaintiff however was satisfied that the order should be made in the usual form.

Order XXX rule 10 provides (1): "If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an Order requiring him to answer, or further answer, as the case may be."

[13] [13] Now looking at the interrogatories in question and the respective answers I feel it quite impossible to say that the questions have not been answered or have not been answered sufficiently. The plaintiff's objection is not really that the answers are insufficient, but that they are not the answers which he wants and was led to expect. I do not think therefore that Order XXX rule 10 can be relied on by the plaintiff at all. The answers commit the defendants to a certain view of the facts. Whether or not in the face of Lambert's evidence that view can be successfully supported at the trial, is not a question which I am called upon to consider at the present stage of the proceedings.

I now come to counsel's argument based on the inherent jurisdiction of the Court. I think that there can be no doubt that such inherent jurisdiction exists, as Cotton L.J. said in *Hill* v. *Hart Davis,* 26 Ch. D. at page 472:

> "It is the duty of the Court to see that its files are not made the instrument of oppression, and without any provision in the Rules of the Court has the power and it is its duty to order oppressive documents to be taken off the file."

That was the case of an affidavit of documents which was unnecessarily and oppressively long.

Then again the case of *Remmington* v. *Scoles,* [1897] 2 Ch. p. 1, the Court ordered an evasive defence to be struck out, as the defendant had already in an affidavit admitted certain of the same allegations as were made in the statement of claim and had not denied others. In his defence accordingly he set up a case which he could not possibly support at the trial. At page 5 the judgment of Romer J. reads as follows:—

> "The facts in the statement of claim have substantially all been admitted by the defendant in prior proceedings. He clearly has no defence whatever to the action, and no substantial defence is shewn by the statement of defence; but obviously he wants to delay and hinder the plaintiffs, and for that reason and no other he puts in a statement of defence, denying or refusing to admit every substantial statement in the statement of claim. (His Lordship read the statement of defence). I think under the circumstances this is not a real defence at all, but merely an abuse of the process of the Court, and I order it to be struck out."

In my opinion the principles laid down in these two cases can be applied equally in the case of interrogatories, and if Lambert had been the defendant, there might have been good ground for submitting that he could not possibly support answers which were in contradiction to his sworn statements and that if such answers had been filed the Court could have struck them out as a sham and an abuse of the process of the Court. But Lambert is not the defendant and if the company are advised and think they can support answers based on an entirely different view of facts, I conceive that they must be at liberty to do so. No case was cited to me in which a defence has been struck out because it was inconsistent with a previous statement made by a witness likely to be called by, or by an employee of the defendants. In my opinion therefore the inherent jurisdiction of the Court cannot be invoked in a case of this kind.

The fact remains however that although the defendants may be correct in the letter of the law, it is somewhat extraordinary that the secretary should have obtained from Lambert information contradicting his sworn evidence. This evidence in the Police Court was produced before me and I need only refer to one or two passages.

In examination-in-chief he says:—

> "I appealed to the crowd inside the vestibule to disperse and also to remain quiet. This had no effect whereupon I asked two Police constables who were on duty in front of the theatre to assist me by preventing the crowd forcing their way in. Police constable 1528 (identified) was one of the Police constables. I called them from the front and they stood in the door on right hand side leading into the theatre."

In cross-examination he says:—

> "Exactly what I said to the Police constable was to endeavour to keep the crowd quiet and to endeavour to get them away. The Police constables were told to keep the crowd quiet."

and later:

> "I thought the Police constables uniform would have been a quietening influence. I posted the Police constables in the precincts."

At the hearing Mr. Briggs on behalf of the defendants produced the proof of the evidence which Lambert is prepared to give at the trial and upon which the secretary's answers to interrogatories are based. Mr. Briggs submitted that the issues in this case and in the Police Court case were quite different and that some of the answers in cross-examination were obviously to leading questions and that this would

account for the discrepancies between the answers to interrogatories and Lambert's evidence in the Police Court. This is not an issue which I desire to prejudge, but as at present advised I failed to see how Lambert's statement "I called them (the Police constables) from the front" and the secretary's statement "Lambert did *not* call two or any consables from the front" can be regarded, in the words of Professor Caird, as "different aspects of the same truth."

I think therefore that the order refusing these applications should be without prejudice to an application by the plaintiff to deliver further interrogatories, dealing in greater detail with the facts as sworn to by Lambert in tbe Police Court.

[14] [14] The question then arises whether Lambert can be called upon to answer such further interrogatories. Considerable argument was addressed to me as to whether Lambert was or was not an "officer" of the company within the meaning of Order XXX rule 5. I do not think it is necessary to refer to all the authorities. In the case of *Attorney-General* v. *North Metropolitan Tramways Co.*, [1892] 3 Ch. p. 70, cited North J. had no doubt that he could, if he thought fit, direct the traffic manager of the defendant company to answer an interrogatory as to the capital and moneys which had been applied for the purpose of carrying on the defendant company's business. I think the word "officer" should receive a liberal construction with a view to giving the plaintiff the information to which he is entitled. That does not mean that the Court would order a door-keeper who happened to be a witness to answer interrogatories, but Lambert was much more than that. He was at the time the acting manager in charge of the Capitol Theatre and he is still an employee of the defendants as manager of the Pavilion. In my opinion he is an "officer" of the company within the meaning of the rule and is the proper person by whom the further interrogatories should be answered.

I am much indebted to counsel on the both sides for the assistance they have given to the Court in a matter which raises various points not strictly covered by authority.

Application dismissed.

Solicitors: *Allen & Gledhill; Braddell Bros.*

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[15] [15] F.M.S. REPORTS

M. C. CORBETT v. IPOH TIN DREDGING LTD.

[O.C.J. (Howes J.) August 10, 1935]

[Perak Civil Suit No. 337 of 1934]

Contract — Conclusiveness of auditors' certificate — Meaning of phrase "when a dredge starts to work" — Conflict of laws — Remuneration by a percentage on net profits — Deduction of British Income Tax — Validity of deduction — Tin and Tin-ore (Restriction) Enactment, 1931 — Effect of grouping on contracts executed prior to the Enactment coming into force.

The plaintiff and defendants entered into an agreement on the 9th May, 1930, in respect of a tin mine known as the Ayer Itam property, clause 4 of which read as follows:

"The certificate of the Auditors of the Company as to the amount of the sum payable to Mr. Corbett and ascertainable as aforesaid shall be final and binding on both parties."

Subsequently the parties mutually varied this clause by the defendants undertaking to furnish, in addition to the certificate of the auditors, a statement of account showing the basis of the certificate.

By clause 3 of the agreement the accounts of the defendants were to be made up a year from when the dredge started work. The dredge did not begin to win tin until some weeks after it started to work and the defendants contended that the words "starts to work" mean "starts to win tin."

By clause 2(c) of the agreement the defendants agreed to pay to the plaintiff at Ipoh 15 per cent. of the net profits and by clause 5 they also agreed to pay to the plaintiff £2,000 a year, payable quarterly. Clause 5 did not specify where the £2,000 a year was to be paid, but in fact, with one exception, such payments were made in Ipoh. The defendants in making the payments under these clauses deducted amounts on account of British Income Tax in spite of protests by the plaintiff.

The defendants, without obtaining permission from the plaintiff, grouped the Ayer Itam property with other mines under the Tin and Tin-ore (Restriction) Enactment, 1931, and the plaintiff alleged that in so doing the defendants committed a breach of the agreement.

Held: that clause 4 having been mutually varied by the defendants undertaking to furnish the statements of accounts, the plaintiff could re-open such accounts or falsify and surcharge the same upon proof of errors or that the auditors had acted on a wrong principle.

Held further, that a dredge starts to work when it begins to carry out the purpose for which it is intended, namely to dredge, whether the material dredged contains tin or not.

Held further, that the law of the Federated Malay States governed the agreement and consequently the defendants were not entitled to deduct income tax payable in England.

Held further, that the defendants in grouping this property with other mines availed themselves of a lawful right given to them under the Tin and Tin-ore (Restriction) Enactment, 1931, and that in so doing they did not commit any breach of the agreement.

Roland Braddell, the Hon. Mr. E. D. Shearn and *L. T. Williams* for the plaintiff.

On the question of the certificate of the auditors under clause 4 of the agreement the plaintiff is entitled to have the accounts re-opened if he can show errors or if the auditors have misread the law and the legal construction of the agreement: *British Westinghouse and Manufacturing Co. Ltd.* v. *Underground Electric Railways Co. of London Ltd.*, [1912] A.C. 673; *Williamson* v. *Barbour*, (1877) 9 Ch. D. 529; *Johnston* v. *Chestergate Hat Manufacturing Co. Ltd.*, [1915] 2 Ch. 338. The place of performance of the agreement is Perak and therefore the law governing it is that of the Federated Malay States: *Dicey's* Conflict of Laws, 5th Ed. pp. 628, 663, 669 and 671; *Indian and General Investment Trust Ltd.* v. *Borax Consolidated Ltd.*, [1920] 1 K.B. 539. Grouping by defendants is a breach of the agreement because the Tin and Tin-ore (Restriction) Enactment, 1931, does not affect contracts already executed.

The Hon. Mr. Palgrave Simpson and *H. R. Rix* for the defendants.

Certificate of auditors conclusive: *Sharpe* v. *San Paulo Railway Co.* (1873) 8 Ch. App. 597; *Eaglesham* v. *McMaster*, [1920] 2 K.B. 169; *In re Nott and Cardiff Corporation*, [1918] 2 K.B. 146, which contradicts the decision in *Johnston* v. *Chestergate Hat Manufacturing Co. Ltd., supra. Prima facie* the